



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-11431

TJD:cjs:jf

In: 1/31/11 Due 2/1/11 a.m.

RMR (TWLj)

DOA:.....Skwarczek, BAB0031 - Direct DHS to study and implement changes to Medical Assistance and authorize DHS to change existing standards and procedures

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

D-note

revision of existing Statutes or

Do Not Gen

1 AN ACT ... relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
MEDICAL ASSISTANCE

Under current law, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited resources. Some services are provided through programs that operate under a waiver of federal laws related to medical assistance (MA waiver programs). This bill requires DHS to study potential changes to the MA state plan and to waivers of federal law relating to medical assistance for certain purposes, including increasing the cost effectiveness and efficiency of care for the MA program and MA waiver programs and improving the health status of individuals who receive benefits under the MA program or an MA waiver program. If DHS determines, as a result of the study, that an alteration of the laws or adoption of additional rules would advance any of the purposes for which the study was conducted, DHS may promulgate rules to do any of the following: require cost sharing from program benefit recipients up to the maximum allowed by the federal government; authorize providers to deny care or services if a program benefit recipient is unable to share costs; modify existing benefits or establish various

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and verifying eligibility requirements

benefits packages and offer different packages to different groups of recipients; ~~develop~~ provider reimbursement models ~~based on~~ particular services; mandate that program benefit recipients enroll in managed care; restrict or eliminate presumptive eligibility; impose restrictions on providing benefits to individuals who are not citizens of the United States; set standards for establishing residency; develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility; and reduce income levels for purposes of determining eligibility to 133 percent of the federal poverty line for adults who are ~~not pregnant and not disabled~~. DHS must submit an amendment to the state MA plan or request a waiver of federal laws related to medical assistance, if necessary, to the extent necessary to implement any proposal. If the federal Department of Health and Human Services does not allow the amendment or does not grant the waiver, DHS may not promulgate rules or implement the proposal. The bill also requires DHS, at the time of promulgating the permanent rule, to request the Legislative Reference Bureau to draft and to submit to the appropriate standing committees of the legislature legislation that would conform any conflicting statutes to the rule.

Insert A-1

put the into effect

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 49.45 (2m) of the statutes is created to read:
- 2 49.45 (2m) AUTHORIZATION FOR MODIFICATIONS TO PROGRAMS; STUDY. (a) In this
- 3 subsection, "Medical Assistance program" includes any program operated under this
- 4 subchapter, demonstration program operated under 42 USC 1315, and program
- 5 operated under a waiver of federal law relating to medical assistance that is granted
- 6 by the federal department of health and human services.
- 7 (b) The department shall study potential changes to the Medical Assistance
- 8 state plan and to waivers of federal law relating to medical assistance obtained from
- 9 the federal department of health and human services for all of the following
- 10 purposes:
- 11 1. Increasing the cost effectiveness and efficiency of care and the care delivery
- 12 system for Medical Assistance programs.

revision of existing statutes or

- 2. Limiting switching from private health insurance to Medical Assistance programs.
- 3. Ensuring the long-term viability and sustainability of Medical Assistance programs.
- 4. Advancing the accuracy and reliability of eligibility for Medical Assistance programs and claims determinations and payments.
- 5. Improving the health status of individuals who receive benefits under a Medical Assistance program.
- 6. Aligning Medical Assistance program benefit recipient and service provider incentives with health care outcomes.
- 7. Supporting responsibility and choice of medical assistance recipients.

be necessary to

(c) If the department determines, as a result of the study under par. (b), that an alteration of laws or adoption of additional rules would advance a purpose described in par. (b) 1. to 7., the department may promulgate rules that do any of the following related to Medical Assistance programs:

- 1. Require cost sharing from program benefit recipients up to the maximum allowed by federal law or a waiver of federal law.
- 2. Authorize providers to deny care or services if a program benefit recipient is unable to share costs, to the extent allowed by federal law or waiver.
- 3. Modify existing benefits or establish various benefit packages and offer different packages to different groups of recipients.
- 4. Develop provider reimbursement models based on particular services.
- 5. Mandate that program benefit recipients enroll in managed care.
- 6. Restrict or eliminate presumptive eligibility.

Revise

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7. To the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States.

8. Set standards for establishing residency and verifying eligibility requirements.

9. Develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility.

10. Reduce income levels for purposes of determining eligibility to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, to the extent allowed by federal law or waiver. and subject to the limitations under para (d) 2^o

(d) The department shall submit an amendment to the state Medical Assistance plan or request a waiver of federal laws related to medical assistance, if necessary, to the extent necessary to implement any action under par. (c). If the federal department of health and human services does not allow the amendment or does not grant the waiver, the department may not promulgate the rule or implement the action described in the proposed rule.

(e) Notwithstanding s. 227.24 (3), a rule promulgated under par. (c) may be promulgated as an emergency rule under s. 227.24 without a finding of emergency.

(f) At the time the department promulgates a permanent rule under par. (c), the department shall request that the legislative reference bureau draft legislation to conform any conflicting statute to the rule. The secretary shall submit the proposed legislation to the standing committee of each house of the legislature that has jurisdiction over medical assistance matters under s. 13.172 (3).

SECTION 2. 49.45 (3) (n) of the statutes is created to read:

49.45 (3) (n) This subsection does not apply if the department promulgates a rule under sub. (2m) (c) 4., to the extent that the rule conflicts with this subsection.

SECTION 3. 49.45 (6m) (n) of the statutes is created to read:

Ins 4-14

Ins 4-21

Rule of Promulgation

1 49.45 (6m) (n) This subsection does not apply if the department promulgates
2 a rule under sub. (2m) (c) 4., to the extent that the rule conflicts with this subsection.

3 **SECTION 4.** 49.45 (8r) of the statutes is amended to read:

4 49.45 (8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE. The Unless
5 otherwise provided by the department by rule promulgated under sub. (2m) (c), the
6 rate of payment for obstetric and gynecological care provided in primary care
7 shortage areas, as defined in s. 36.60 (1) (cm), or provided to recipients of medical
8 assistance who reside in primary care shortage areas, that is equal to 125% of the
9 rates paid under this section to primary care physicians in primary care shortage
10 areas, shall be paid to all certified primary care providers who provide obstetric or
11 gynecological care to those recipients.

12 **SECTION 5.** 49.45 (18) (ac) of the statutes is amended to read:

13 49.45 (18) (ac) Except as provided in pars. (am) to (d), and subject to par. (ag),
14 any person eligible for medical assistance under s. 49.46, 49.468, or 49.47, or for the
15 benefits under s. 49.46 (2) (a) and (b) under s. 49.471 shall pay up to the maximum
16 amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided
17 under s. 49.46 (2). The service provider shall collect the specified or allowable
18 copayment, coinsurance, or deductible, unless the service provider determines that
19 the cost of collecting the copayment, coinsurance, or deductible exceeds the amount
20 to be collected. The department shall reduce payments to each provider by the
21 amount of the specified or allowable copayment, coinsurance, or deductible. No
22 Unless otherwise provided by the department by rule promulgated under sub. (2m)
23 (c), no provider may deny care or services because the recipient is unable to share
24 costs, but an inability to share costs specified in this subsection does not relieve the
25 recipient of liability for these costs.

1 **SECTION 6.** 49.45 (18) (ag) (intro.) of the statutes is amended to read:

2 49.45 (18) (ag) (intro.) Except as provided in pars. (am), (b), and (c), and subject
3 to par. (d), a recipient specified in par. (ac) shall pay all of the following, unless
4 otherwise provided by the department by rule promulgated under sub. (2m) (c):

5 **SECTION 7.** 49.45 (18) (b) (intro.) of the statutes is amended to read:

6 49.45 (18) (b) (intro.) The Unless otherwise provided by the department by rule
7 promulgated under sub. (2m) (c), the following services are not subject to recipient
8 cost sharing under this subsection:

9 **SECTION 8.** 49.45 (18) (d) of the statutes is amended to read:

10 49.45 (18) (d) No person who designates a pharmacy or pharmacist as his or
11 her sole provider of prescription drugs and who so uses that pharmacy or pharmacist
12 is liable under this subsection for more than \$12 per month for prescription drugs
13 received, unless otherwise provided by the department by rule promulgated under
14 sub. (2m) (c).

15 **SECTION 9.** 49.45 (23) (a) of the statutes is amended to read:

16 49.45 (23) (a) The department shall request a waiver from the secretary of the
17 federal department of health and human services to permit the department to
18 conduct a demonstration project to provide health care coverage for basic primary
19 and preventive care to adults who are under the age of 65, who have family incomes
20 not to exceed 200 percent of the poverty line, and who are not otherwise eligible for
21 medical assistance under this subchapter, the Badger Care health care program
22 under s. 49.665, or Medicare under 42 USC 1395 et seq. If the department
23 promulgates a rule under sub. (2m) (c) 10., this paragraph does not apply to the
24 extent that it conflicts with the rule.

25 **SECTION 10.** 49.45 (23) (b) of the statutes is amended to read:

1 49.45 (23) (b) If the waiver is granted and in effect, the department may
2 promulgate rules defining the health care benefit plan, including more specific
3 eligibility requirements and cost-sharing requirements. ~~Cost~~ Unless otherwise
4 provided by the department by rule promulgated under sub. (2m) (c), cost sharing
5 may include an annual enrollment fee, which may not exceed \$75 per year.
6 Notwithstanding s. 227.24 (3), the plan details under this subsection may be
7 promulgated as an emergency rule under s. 227.24 without a finding of emergency.
8 If the waiver is granted and in effect, the demonstration project under this subsection
9 shall begin on January 1, 2009, or on the effective date of the waiver, whichever is
10 later.

11 **SECTION 11.** 49.45 (24g) (c) of the statutes is amended to read:

12 49.45 (24g) (c) The department's proposal under par. (a) shall specify increases
13 in reimbursement rates for providers that satisfy the conditions under par. (a) 1. or
14 2., and shall provide for payment of a monthly per-patient care coordination fee to
15 those providers. The department shall set the increases in reimbursement rates and
16 the monthly per-patient care coordination fee so that together they provide
17 sufficient incentive for providers to satisfy a condition under par. (a) 1. or 2. The
18 proposal shall specify effective dates for the increases in reimbursement rates and
19 the monthly per-patient care coordination fee that are no sooner than July 1, 2011.
20 If the department promulgates a rule under sub. (2m) (c) 4., this paragraph does not
21 apply to the extent that it conflicts with the rule.

22 **SECTION 12.** 49.45 (24r) (a) of the statutes is amended to read:

23 49.45 (24r) (a) The department shall implement any waiver granted by the
24 secretary of the federal department of health and human services to permit the
25 department to conduct a demonstration project to provide family planning, as

1 defined in s. 253.07 (1) (a), under medical assistance to any woman between the ages
2 of 15 and 44 whose family income does not exceed 200% of the poverty line for a family
3 the size of the woman's family. If the department promulgates a rule under sub. (2m)
4 (c) 10., this paragraph does not apply to the extent it conflicts with the rule.

5 **SECTION 13.** 49.45 (24r) (b) of the statutes is amended to read:

6 49.45 (24r) (b) The department may request an amended waiver from the
7 secretary to permit the department to conduct a demonstration project to provide
8 family planning to any man between the ages of 15 and 44 whose family income does
9 not exceed 200 percent of the poverty line for a family the size of the man's family.
10 If the amended waiver is granted, the department may implement the waiver. If the
11 department promulgates a rule under sub. (2m) (c) 10., this paragraph does not apply
12 to the extent it conflicts with the rule.

13 **SECTION 14.** 49.45 (25g) (c) of the statutes is amended to read:

14 49.45 (25g) (c) The department's proposal under par. (b) shall specify increases
15 in reimbursement rates for providers that satisfy the conditions under par. (b), and
16 shall provide for payment of a monthly per-patient care coordination fee to those
17 providers. The department shall set the increases in reimbursement rates and the
18 monthly per-patient care coordination fee so that together they provide sufficient
19 incentive for providers to satisfy a condition under par. (b) 1. or 2. The proposal shall
20 specify effective dates for the increases in reimbursement rates and the monthly
21 per-patient care coordination fee that are no sooner than January 1, 2011. The
22 increases in reimbursement rates and monthly per-patient care coordination fees
23 that are not provided by the federal government shall be paid from the appropriation
24 under. s. 20.435 (1) (am). If the department promulgates a rule under sub. (2m) (c)
25 4., this paragraph does not apply to the extent it conflicts with the rule.

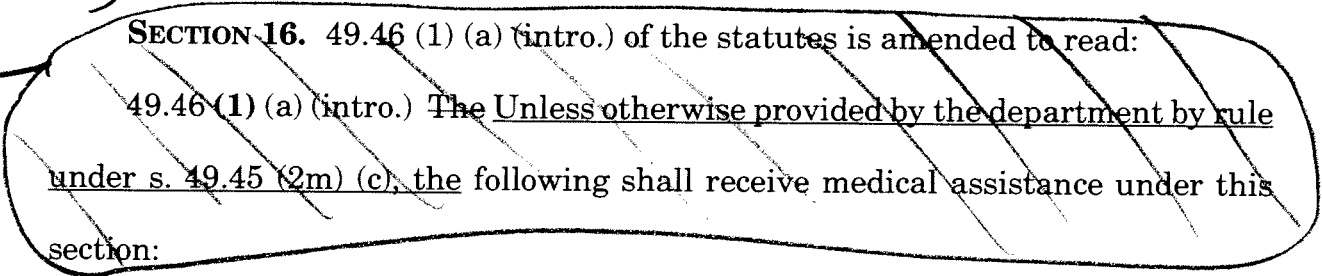
1 SECTION 15. 49.45 (27) of the statutes is amended to read:

2 49.45 (27) ELIGIBILITY OF ALIENS. A person who is not a U.S. citizen or an alien
3 lawfully admitted for permanent residence or otherwise permanently residing in the
4 United States under color of law may not receive medical assistance benefits except
5 as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v), unless otherwise
6 provided by the department by rule promulgated under sub. (2m) (c).

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9-7

7 SECTION 16. 49.46 (1) (a) (intro.) of the statutes is amended to read:

8 ~~49.46 (1) (a) (intro.) The Unless otherwise provided by the department by rule~~
9 ~~under s. 49.45 (2m) (c), the following shall receive medical assistance under this~~
10 ~~section:~~



11 SECTION 17. 49.46 (2) (a) (intro.) of the statutes is amended to read:

12 49.46 (2) (a) (intro.) Except as provided in par. (be) and unless otherwise
13 provided by the department by rule promulgated under s. 49.45 (2m) (c), the
14 department shall audit and pay allowable charges to certified providers for medical
15 assistance on behalf of recipients for the following federally mandated benefits:

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16 SECTION 18. 49.465 (2) (intro.) of the statutes is amended to read:

17 49.465 (2) (intro.) A Unless otherwise provided by the department by rule
18 promulgated under s. 49.45 (2m) (c), a pregnant woman is eligible for medical
19 assistance benefits, as provided under sub. (3), during the period beginning on the
20 day on which a qualified provider determines, on the basis of preliminary
21 information, that the woman's family income does not exceed the highest level for
22 eligibility for benefits under s. 49.46 (1) or 49.47 (4) (am) or (c) 1. and ending as
23 follows:

24 SECTION 19. 49.47 (4) (a) (intro.) of the statutes is amended to read:

1 49.47 (4) (a) (intro.) ~~Any~~ Unless otherwise provided by the department by rule
2 under s. 49.45 (2m) (c), any individual who meets the limitations on income and
3 resources under pars. (b) to (c) and who complies with pars. (cm) and (cr) shall be
4 eligible for medical assistance under this section if such individual is:

5 **SECTION 20.** 49.47 (5) (intro.) of the statutes is amended to read:

6 49.47 (5) INVESTIGATION BY DEPARTMENT. (intro.) The department may make
7 additional investigation of eligibility at any of the following times:

8 **SECTION 21.** 49.47 (5) (a) of the statutes is amended to read:

9 49.47 (5) (a) When there is reasonable ground for belief that an applicant may
10 not be eligible or that the beneficiary may have received benefits to which the
11 beneficiary is not entitled; ~~or,~~

12 **SECTION 22.** 49.47 (5) (c) of the statutes is created to read:

13 49.47 (5) (c) Any time determined by the department by rule promulgated
14 under s. 49.45 (2m) (c) to determine eligibility or to reevaluate continuing eligibility.

15 **SECTION 23.** 49.47 (6) (a) (intro.) of the statutes is amended to read:

16 49.47 (6) (a) (intro.) ~~The~~ Unless otherwise provided by the department by rule
17 promulgated under s. 49.45 (2m) (c), the department shall audit and pay charges to
18 certified providers for medical assistance on behalf of the following:

19 **SECTION 24.** 49.471 (13) of the statutes is created to read:

20 49.471 (13) APPLICABILITY. If the department promulgates a rule under s. 49.45
21 (2m) (c), subs. (4), (5), (8), (10), and (11) do not apply to the extent that those
22 subsections conflict with the rule.

23 **SECTION 25.** 49.472 (3) (intro.) of the statutes is amended to read:

24 49.472 (3) ELIGIBILITY. (intro.) Except as provided in sub. (6) (a) and unless
25 otherwise provided by the department by rule promulgated under s. 49.45 (2m) (c),

1 an individual is eligible for and shall receive medical assistance under this section
2 if all of the following conditions are met:

3 **SECTION 26.** 49.472 (4) (b) (intro.) of the statutes is amended to read:

4 49.472 (4) (b) (intro.) The department may waive monthly premiums that are
5 calculated to be below \$10 per month. The Unless otherwise provided by the
6 department by rule promulgated under s. 49.45 (2m) (c), the department may not
7 assess a monthly premium for any individual whose income level, after adding the
8 individual's earned income and unearned income, is below 150% of the poverty line.

9 **SECTION 27.** 49.473 (2) (intro.) of the statutes is amended to read:

10 49.473 (2) (intro.) ~~A~~ Unless otherwise provided by the department by rule
11 promulgated under s. 49.45 (2m) (c), a woman is eligible for medical assistance as
12 provided under sub. (5) if, after applying to the department or a county department,
13 the department or a county department determines that she meets all of the
14 following requirements:

15 **SECTION 28.** 49.473 (5) of the statutes is amended to read:

16 49.473 (5) The department shall audit and pay, from the appropriation
17 accounts under s. 20.435 (4) (b) and (o), allowable charges to a provider who is
18 certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who
19 meets the requirements under sub. (2) for all benefits and services specified under
20 s. 49.46 (2), unless otherwise provided by the department by rule promulgated under
21 s. 49.45 (2m) (c).

22 (END)

D-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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TJD:.....

1 INSERT A-1

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DHS

To reduce the eligibility income levels to a certain amount, DHS must request a waiver from the secretary of the federal department of health and human services to permit ~~the department~~ to have in effect eligibility standards, methodologies, and procedures that are more restrictive than those in place on March 23, 2010. If DHS does not receive approval for the waiver before July 1, 2012, ~~the department~~ must reduce the eligibility income levels for MA programs and MA waiver programs to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, to the extent allowed under and following procedures under federal law. ~~The department~~ may promulgate the rules as emergency rules without the findings or evidence of emergency and without the statutory time limits.

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(END INSERT A-1)

2 INSERT 4-14

3 2. The department shall request a waiver from the secretary of the federal
4 department of health and human services to permit the department to have in effect
5 eligibility standards, methodologies, and procedures under the state Medical
6 Assistance plan or waivers of federal laws related to medical assistance that are more
7 restrictive than those in place on March 23, 2010. If the waiver request does not
8 receive federal approval before July 1, 2012, the department shall reduce income
9 levels for the purposes of determining eligibility to 133 percent of the federal poverty
10 line for adults who are not pregnant and not disabled, to the extent permitted under
11 42 USC 1396a (gg), if the department follows the procedures under 42 USC 1396a
12 (gg) (3).

(END INSERT 4-14)

13 INSERT 4-21

14 (e) Using the procedure under s. 227.24, the department may promulgate a rule
15 under par. (c) as an emergency rule. Notwithstanding s. 227.24 (1) (a) and (3), the
16 department is not required to provide evidence that promulgating a rule under ~~the~~

16

1 par. (c) as an emergency rule is necessary for the preservation of ^{the} public peace, health,
 2 safety, or welfare and is not required to provide a finding of emergency for a rule
 3 promulgated under ~~sub~~ par. (c). Notwithstanding s. 227.24 (1) (c) and (2), an
 4 emergency rule promulgated under this paragraph remains in effect until whichever
 5 of the following occurs first:

- 6 1. The effective date of the repeal of the emergency rule.
- 7 2. The date on which the permanent rule promulgated under par. (c) takes
 8 effect.

(END INSERT 4-21)

9 INSERT 5-³~~A~~
 10 SECTION ~~49~~ 49.45 (8) (b) of the statutes is amended to read:

11 49.45 (8) (b) Reimbursement Unless otherwise provided by the department by
 12 rule promulgated under sub. (2m) (c), reimbursement under s. 20.435 (4) (b), (o), and
 13 (w) for home health services provided by a certified home health agency or
 14 independent nurse shall be made at the home health agency's or nurse's usual and
 15 customary fee per patient care visit, subject to a maximum allowable fee per patient
 16 care visit that is established under par. (c).

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153; 2009 a. 2, 28, 113, 177, 180, 190, 221, 334, 342.

17 SECTION ~~49~~ 49.45 (8) (c) of the statutes is amended to read:
 18 49.45 (8) (c) The department shall establish a maximum statewide allowable
 19 fee per patient care visit, for each type of visit with respect to provider, that may be
 20 no greater than the cost per patient care visit, as determined by the department from
 21 cost reports of home health agencies, adjusted for costs related to case management,

1 care coordination, travel, record keeping and supervision, unless otherwise provided
2 by the department by rule promulgated under sub. (2m) (c).

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153; 2009 a. 2, 28, 113, 177, 180, 190, 221, 334, 342.

(END INSERT 5-4)

3 INSERT 5-12

4 SECTION ~~3~~ 49.45 (8v) of the statutes is amended to read:

5 49.45 (8v) INCENTIVE-BASED PHARMACY PAYMENT SYSTEM. The department shall
6 establish a system of payment to pharmacies for legend and over-the-counter drugs
7 provided to recipients of medical assistance that has financial incentives for
8 pharmacists who perform services that result in savings to the medical assistance
9 program. Under this system, the department shall establish a schedule of fees that
10 is designed to ensure that any incentive payments made are equal to or less than the
11 documented savings unless otherwise provided by the department by rule
12 promulgated under sub. (2m) (c). The department may discontinue the system
13 established under this subsection if the department determines, after performance
14 of a study, that payments to pharmacists under the system exceed the documented
15 savings under the system.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153; 2009 a. 2, 28, 113, 177, 180, 190, 221, 334, 342.

(END INSERT 5-12)

16 INSERT 9-7

17 SECTION ~~A~~ 49.45 (39) (b) 1. of the statutes is amended to read:

1 49.45 (39) (b) 1. 'Payment for school medical services.' If a school district or a
2 cooperative educational service agency elects to provide school medical services and
3 meets all requirements under par. (c), the department shall reimburse the school
4 district or the cooperative educational service agency for 60% of the federal share of
5 allowable charges for the school medical services that it provides, unless otherwise
6 provided by the department by rule promulgated under sub. (2m) (c), ✓ and, as
7 specified in subd. 2., for allowable administrative costs. If the Wisconsin Center for
8 the Blind and Visually Impaired or the Wisconsin Educational Services Program for
9 the Deaf and Hard of Hearing elects to provide school medical services and meets all
10 requirements under par. (c), the department shall reimburse the department of
11 public instruction for 60% of the federal share of allowable charges for the school
12 medical services that the Wisconsin Center for the Blind and Visually Impaired or
13 the Wisconsin Educational Services Program for the Deaf and Hard of Hearing
14 provides, unless otherwise provided by the department by rule promulgated under
15 sub. (2m) (c), ✓ and, as specified in subd. 2., for allowable administrative costs. A school
16 district, cooperative educational service agency, the Wisconsin Center for the Blind
17 and Visually Impaired or the Wisconsin Educational Services Program for the Deaf
18 and Hard of Hearing may submit, and the department shall allow, claims for common
19 carrier transportation costs as a school medical service unless the department
20 receives notice from the federal health care financing administration that, under a
21 change in federal policy, the claims are not allowed. If the department receives the
22 notice, a school district, cooperative educational service agency, the Wisconsin
23 Center for the Blind and Visually Impaired, or the Wisconsin Educational Services
24 Program for the Deaf and Hard of Hearing may submit, and the department shall
25 allow, unreimbursed claims for common carrier transportation costs incurred before

1 the date of the change in federal policy. The department shall promulgate rules
 2 establishing a methodology for making reimbursements under this paragraph. All
 3 other expenses for the school medical services provided by a school district or a
 4 cooperative educational service agency shall be paid for by the school district or the
 5 cooperative educational service agency with funds received from state or local taxes.
 6 The school district, the Wisconsin Center for the Blind and Visually Impaired, the
 7 Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the
 8 cooperative educational service agency shall comply with all requirements of the
 9 federal department of health and human services for receiving federal financial
 10 participation.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153; 2009 a. 2, 28, 113, 177, 180, 190, 221, 334, 342.

11 **SECTION ~~49.46~~ 49.46 (1) (n)** of the statutes is created to read:
 12 49.46 (1) (n) If the department promulgates a rule under s. 49.45 (2m) (c) 8.,
 13 9., or 10., this subsection does not apply to the extent that it conflicts with the rule.

(END INSERT 9-7)

14 INSERT 9-16

15 **SECTION ~~49.46~~ 49.46 (2) (b) (intro.)** of the statutes is amended to read:
 16 49.46 (2) (b) (intro.) Except as provided in pars. (be) and (dc) and unless
 17 otherwise provided by the department by rule promulgated under s. 49.45 (2m) (c),
 18 the department shall audit and pay allowable charges to certified providers for
 19 medical assistance on behalf of recipients for the following services:

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122,

173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 253; 2007 a. 20, 91; 2009 a. 28, 221.

(END INSERT 9-16)

1

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1143/2dn

TJD:.....

WJ

Date

To Marta Skwarczek:

As I mentioned in my last drafter's note about this draft, this request raises potential constitutional issues regarding the separation of powers, especially the delegation doctrine. I drafted language in the previous version of the draft in an attempt to minimize these constitutional issues. You said that the legal department of DHS requested to remove the provision requiring DHS to submit legislation to conform to the statutes and the rules. The legal department of DHS also requested significant changes to the emergency rule-making provision. These changes, in addition to eliminating notice and publication requirements, would leave the emergency rules in effect without any requirement to make permanent rules and without any time limit, except that imposed by DHS, and with no indication in the statutes that the law has changed at the will of DHS. I am unsure whether this may raise other constitutional issues, and you may want to request a legal opinion from the legal department of either DHS or DOA or both as to the basis for the legality of this draft. You may want to consider inserting a provision requiring some type of ongoing publication, even posting of the current rules on the internet, in order that the public and other agencies would know the current law. =

I did not make the requested change to insert "unless otherwise provided..." to the introduction of s. 49.45 (2) (a) in this version of the draft. In the context of departmental duties, the proviso is vague. Does this mean the department is allowed to do its duties instead of required? Can the department add requirements, eliminate requirements, modify those requirements, or take all of those actions? There is no guidance to what type of action DHS could take under this proviso. It may be possible to add "unless otherwise provided..." to certain subdivisions under s. 49.45 (2) (a) that may directly conflict with the subject of the potential rules under s. 49.45 (2m) (c), as created in this draft.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1143/2dn
TJD:wlj:rs

February 1, 2011

To Marta Skwarczek:

As I mentioned in my last drafter's note about this draft, this request raises potential constitutional issues regarding the separation of powers, especially the delegation doctrine. I drafted language in the previous version of the draft in an attempt to minimize these constitutional issues. You said that the legal department of DHS requested to remove the provision requiring DHS to submit legislation to conform to the statutes and the rules. The legal department of DHS also requested significant changes to the emergency rule-making provision. These changes, in addition to eliminating notice and publication requirements, would leave the emergency rules in effect without any requirement to make permanent rules and without any time limit, except that imposed by DHS, and with no indication in the statutes that the law has changed at the will of DHS. I am unsure whether this may raise other constitutional issues, and you may want to request a legal opinion from the legal department of either DHS or DOA or both as to the basis for the legality of this draft. You may want to consider inserting a provision requiring some type of ongoing publication, even posting of the current rules on the Internet, in order that the public and other agencies would know the current law.

I did not make the requested change to insert "unless otherwise provided..." to the introduction of s. 49.45 (2) (a) in this version of the draft. In the context of departmental duties, the proviso is vague. Does this mean the department is allowed to do its duties instead of required? Can the department add requirements, eliminate requirements, modify those requirements, or take all of those actions? There is no guidance to what type of action DHS could take under this proviso. It may be possible to add "unless otherwise provided..." to certain subdivisions under s. 49.45 (2) (a) that may directly conflict with the subject of the potential rules under s. 49.45 (2m) (c), as created in this draft.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, February 01, 2011 9:40 AM
To: Dodge, Tamara
Subject: RE: LRB-1143/1 BAB0031

Tami,

Here is a small change to add to the BAB Medicaid Reform draft:

The department shall request a waiver from the secretary of the federal Department of Health and Human Services to permit the department to have in effect eligibility standards, methodologies and procedures under the Medicaid State Plan or Medicaid waivers that are more restrictive than those in place on the date of enactment of the Patient Protection and Affordable Care Act. If this waiver request does not receive federal approval prior to December 31, 2011, ~~prior to July 1, 2012~~, the department shall reduce income levels for the purposes of determining eligibility to 133 percent of the federal poverty line for adults who are not pregnant and not disabled on July 1, 2012, to the extent permitted under the Patient Protection and Affordable Care Act (or section 1902 of the Social Security Act as amended by PPACA).

Marta Skwarczek

Health Services and Insurance Team
 Executive Policy and Budget Analyst
 608-267-7980

From: Skwarczek, Marta A - DOA
Sent: Thursday, January 27, 2011 5:51 PM
To: Dodge, Tamara - LEGIS
Cc: Gauger, Michelle C - DOA
Subject: RE: LRB-1143/1 BAB0031

Tami,

As a follow up, DHS has recommended that the "unless otherwise provided..." clause be inserted in the following additional statutory provisions:

49.45 (2)(a) – general requirements

49.45 (8) – per-visit limits on home health reimbursement

49.45 (8v) – incentive-based pharmacy payment system

49.45 (39) – school-based services (60% requirement)

49.46 (1) – eligibility [consider creating a par (n) such that the "unless otherwise provided" clause covers all eligibility provisions of sub. (1), rather than just par. (a)]

49.46(2)(b) – covered optional benefits

Marta Skwarczek

Health Services and Insurance Team
 Executive Policy and Budget Analyst
 608-267-7980

From: Skwarczek, Marta A - DOA
Sent: Thursday, January 27, 2011 12:20 PM
To: Dodge, Tamara - LEGIS

Subject: LRB-1143/1 BAB0031

Importance: High

Tami,

I apologize for the piecemeal way I am giving this to you; however, DHS's legal team has made most of these changes. Their marked up version of the bill is attached here; I think it should reflect changes a-c.

This is a summary of the changes:

a) Eliminate the provision that DHS should submit legislation to conform statutes to any rules promulgated to implement reform items.

b) Make the paragraph about emergency rule authority more broad. New language to replace paragraph (e), page 4, lines 14 -16 is included below. The proposed language will allow the emergency rule to remain in effect until repealed and we wouldn't need to make a finding of emergency.

~~(e) The department may use the procedure under s. 227.24 to promulgate a rule under par. (c). Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under this subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.~~

c) Replace line 3, page 4, to read: "8. Set standards for establishing and verifying eligibility requirements."

d) The provision reducing eligibility of individuals over 133% of the federal poverty level should be amended:

The department shall request a waiver from the secretary of the federal Department of Health and Human Services to permit the department to have in effect eligibility standards, methodologies and procedures under the Medicaid State Plan or Medicaid waivers that are more restrictive than those in place on the date of enactment of the Patient Protection and Affordable Care Act. If this waiver request does not receive federal approval prior to July 1, 2012, the department shall reduce income levels for the purposes of determining eligibility to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, to the extent permitted under the Patient Protection and Affordable Care Act (or section 1902 of the Social Security Act as amended by PPACA).

Here is the PPACA language as a reference:

Patient Protection and Affordable Care Act (PPACA); Public Law 111-148

(b) MAINTENANCE OF MEDICAID INCOME ELIGIBILITY.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)—

(A) by striking “and” at the end of paragraph (72);

(B) by striking the period at the end of paragraph (73) and inserting “; and”; and

(C) by inserting after paragraph (73) the following new paragraph:

“(74) provide for maintenance of effort under the State plan or under any waiver of the plan in accordance with subsection (gg).”; and

(2) by adding at the end the following new subsection:

“(gg) MAINTENANCE OF EFFORT.—

“(1) GENERAL REQUIREMENT TO MAINTAIN ELIGIBILITY

STANDARDS UNTIL STATE EXCHANGE IS FULLY OPERATIONAL.—

Subject to the succeeding paragraphs of this subsection, during the period that begins on the date of enactment of the Patient Protection and Affordable Care Act and ends on the date on which the Secretary determines that an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act is fully operational, as a condition for receiving any Federal payments under section 1903(a) for calendar quarters occurring during such period, a State shall not

have in effect eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of such plan that is in effect during that period, that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under the plan or waiver that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

“(2) CONTINUATION OF ELIGIBILITY STANDARDS FOR CHILDREN UNTIL OCTOBER 1, 2019.—The requirement under paragraph (1) shall continue to apply to a State through September 30, 2019, with respect to the eligibility standards, methodologies, and procedures under the State plan under this title or under any waiver of such plan that are applicable to determining the eligibility for medical assistance of any child who is under 19 years of age (or such higher age as the State may have elected).

“(3) NONAPPLICATION.—During the period that begins on January 1, 2011, and ends on December 31, 2013, the requirement under paragraph (1) shall not apply to a State with respect to nonpregnant, nondisabled adults who are eligible for medical assistance under the State plan or under a waiver of the plan at the option of the State and whose income exceeds 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved if, on or after December 31, 2010, the State certifies to the Secretary that, with respect to the State fiscal year during which the certification is made, the State has a budget deficit, or with respect to the succeeding State fiscal year, the State is projected to have a budget deficit. Upon submission of such a certification to the Secretary, the requirement under paragraph (1) shall not apply to the State with respect to any remaining portion of the period described in the preceding sentence.

DHS also has the following question: you add the phrase "Unless otherwise provided by the Department by rule promulgated under sub. (2m)(c)..." to a number of paragraphs under s.49.45 and 49.46 but not to every paragraph. For example, the draft inserts the "notwithstanding" language in s. 49.46(2)(a), relating to mandatory benefits, but not s. 49.46(2)(b), relating to optional benefits. DHS would like to know how you decided which paragraphs were given that phrase.

Thanks.

Marta Skwarczek

Wisconsin Department of Administration
Division of Executive Budget and Finance
Health Services and Insurance Team
Executive Policy and Budget Analyst
608-267-7980



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1143/2
TJD:cjs&wlj:rs

3

In: 2/1/11

Stans RMR

DOA:.....Skwarczek, BAB0031 - Direct DHS to study and implement changes to Medical Assistance and authorize DHS to change existing standards and procedures

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

SM

do NOT go

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited resources. Some services are provided through programs that operate under a waiver of federal laws related to medical assistance (MA waiver programs). This bill requires DHS to study potential changes to the MA state plan and to waivers of federal law relating to medical assistance for certain purposes, including increasing the cost effectiveness and efficiency of care for the MA program and MA waiver programs and improving the health status of individuals who receive benefits under the MA program or an MA waiver program. If DHS determines, as a result of the study, that revision of existing statutes or rules would be necessary to advance any of the purposes for which the study was conducted, DHS may promulgate rules to do any of the following: require cost sharing from program benefit recipients up to the maximum allowed by the federal government; authorize providers to deny care or services if a program benefit recipient is unable to share costs; modify existing benefits or establish various benefits packages and offer

different packages to different groups of recipients; revise provider reimbursement models for particular services; mandate that program benefit recipients enroll in managed care; restrict or eliminate presumptive eligibility; impose restrictions on providing benefits to individuals who are not citizens of the United States; set standards for establishing and verifying eligibility requirements; develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility; and reduce income levels for purposes of determining eligibility. DHS must submit an amendment to the state MA plan or request a waiver of federal laws related to medical assistance, if necessary, to the extent necessary to implement any proposal. If the federal Department of Health and Human Services does not allow the amendment or does not grant the waiver, DHS may not put the rule into effect or implement the proposal. To reduce the eligibility income levels to a certain amount, DHS must request a waiver from the secretary of the federal Department of Health and Human Services to permit DHS to have in effect eligibility standards, methodologies, and procedures that are more restrictive than those in place on March 23, 2010. If DHS does not receive approval for the waiver before July 1, 2012, DHS must reduce the eligibility income levels for MA programs and MA waiver programs to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, to the extent allowed under and following procedures under federal law. DHS may promulgate the rules as emergency rules without the findings or evidence of emergency and without the statutory time limits.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.45 (2m) of the statutes is created to read:

2 **49.45 (2m) AUTHORIZATION FOR MODIFICATIONS TO PROGRAMS; STUDY.** (a) In this
3 subsection, "Medical Assistance program" includes any program operated under this
4 subchapter, demonstration program operated under 42 USC 1315, and program
5 operated under a waiver of federal law relating to medical assistance that is granted
6 by the federal department of health and human services.

7 (b) The department shall study potential changes to the Medical Assistance
8 state plan and to waivers of federal law relating to medical assistance obtained from
9 the federal department of health and human services for all of the following
10 purposes:

1 1. Increasing the cost effectiveness and efficiency of care and the care delivery
2 system for Medical Assistance programs.

3 2. Limiting switching from private health insurance to Medical Assistance
4 programs.

5 3. Ensuring the long-term viability and sustainability of Medical Assistance
6 programs.

7 4. Advancing the accuracy and reliability of eligibility for Medical Assistance
8 programs and claims determinations and payments.

9 5. Improving the health status of individuals who receive benefits under a
10 Medical Assistance program.

11 6. Aligning Medical Assistance program benefit recipient and service provider
12 incentives with health care outcomes.

13 7. Supporting responsibility and choice of medical assistance recipients.

14 (c) If the department determines, as a result of the study under par. (b), that
15 revision of existing statutes or rules would be necessary to advance a purpose
16 described in par. (b) 1. to 7., the department may promulgate rules that do any of the
17 following related to Medical Assistance programs:

18 1. Require cost sharing from program benefit recipients up to the maximum
19 allowed by federal law or a waiver of federal law.

20 2. Authorize providers to deny care or services if a program benefit recipient
21 is unable to share costs, to the extent allowed by federal law or waiver.

22 3. Modify existing benefits or establish various benefit packages and offer
23 different packages to different groups of recipients.

24 4. Revise provider reimbursement models for particular services.

25 5. Mandate that program benefit recipients enroll in managed care.

6. Restrict or eliminate presumptive eligibility.

7. To the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States.

8. Set standards for establishing and verifying eligibility requirements.

9. Develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility.

10. Reduce income levels for purposes of determining eligibility to the extent allowed by federal law or waiver and subject to the limitations under par. (d) 2.

(d) 1. The department shall submit an amendment to the state Medical Assistance plan or request a waiver of federal laws related to medical assistance, if necessary, to the extent necessary to implement any rule promulgated under par. (c). If the federal department of health and human services does not allow the amendment or does not grant the waiver, the department may not put the rule into effect or implement the action described in the rule.

2. The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to have in effect eligibility standards, methodologies, and procedures under the state Medical Assistance plan or waivers of federal laws related to medical assistance that are more

restrictive than those in place on March 23, 2010. If the waiver request does not receive federal approval before July 1, 2012, the department shall reduce income

levels for the purposes of determining eligibility to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, to the extent permitted under

42 USC 1396a (gg), if the department follows the procedures under 42 USC 1396a

(gg) (3).

on July 18th, 19 2012th

December 31, 2011

July 1, 2012

20

21

22

23

24

1 (e) Using the procedure under s. 227.24, the department may promulgate a rule
2 under par. (c) as an emergency rule. Notwithstanding s. 227.24 (1) (a) and (3), the
3 department is not required to provide evidence that promulgating a rule under par.
4 (c) as an emergency rule is necessary for the preservation of the public peace, health,
5 safety, or welfare and is not required to provide a finding of emergency for a rule
6 promulgated under par. (c). Notwithstanding s. 227.24 (1) (c) and (2), an emergency
7 rule promulgated under this paragraph remains in effect until whichever of the
8 following occurs first:

- 9 1. The effective date of the repeal of the emergency rule.
- 10 2. The date on which the permanent rule promulgated under par. (c) takes
11 effect.

12 **SECTION 2.** 49.45 (3) (n) of the statutes is created to read:

13 49.45 (3) (n) This subsection does not apply if the department promulgates a
14 rule under sub. (2m) (c) 4., to the extent that the rule conflicts with this subsection.

15 **SECTION 3.** 49.45 (6m) (n) of the statutes is created to read:

16 49.45 (6m) (n) This subsection does not apply if the department promulgates
17 a rule under sub. (2m) (c) 4., to the extent that the rule conflicts with this subsection.

18 **SECTION 4.** 49.45 (8) (b) of the statutes is amended to read:

19 49.45 (8) (b) Reimbursement Unless otherwise provided by the department by
20 rule promulgated under sub. (2m) (c), reimbursement under s. 20.435 (4) (b), (o), and
21 (w) for home health services provided by a certified home health agency or
22 independent nurse shall be made at the home health agency's or nurse's usual and
23 customary fee per patient care visit, subject to a maximum allowable fee per patient
24 care visit that is established under par. (c).

25 **SECTION 5.** 49.45 (8) (c) of the statutes is amended to read:

1 49.45 (8) (c) The department shall establish a maximum statewide allowable
2 fee per patient care visit, for each type of visit with respect to provider, that may be
3 no greater than the cost per patient care visit, as determined by the department from
4 cost reports of home health agencies, adjusted for costs related to case management,
5 care coordination, travel, record keeping and supervision, unless otherwise provided
6 by the department by rule promulgated under sub. (2m) (c).

7 **SECTION 6.** 49.45 (8r) of the statutes is amended to read:

8 49.45 (8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE. The Unless
9 otherwise provided by the department by rule promulgated under sub. (2m) (c), the
10 rate of payment for obstetric and gynecological care provided in primary care
11 shortage areas, as defined in s. 36.60 (1) (cm), or provided to recipients of medical
12 assistance who reside in primary care shortage areas, that is equal to 125% of the
13 rates paid under this section to primary care physicians in primary care shortage
14 areas, shall be paid to all certified primary care providers who provide obstetric or
15 gynecological care to those recipients.

16 **SECTION 7.** 49.45 (8v) of the statutes is amended to read:

17 49.45 (8v) INCENTIVE-BASED PHARMACY PAYMENT SYSTEM. The department shall
18 establish a system of payment to pharmacies for legend and over-the-counter drugs
19 provided to recipients of medical assistance that has financial incentives for
20 pharmacists who perform services that result in savings to the medical assistance
21 program. Under this system, the department shall establish a schedule of fees that
22 is designed to ensure that any incentive payments made are equal to or less than the
23 documented savings unless otherwise provided by the department by rule
24 promulgated under sub. (2m) (c). The department may discontinue the system
25 established under this subsection if the department determines, after performance

1 of a study, that payments to pharmacists under the system exceed the documented
2 savings under the system.

3 **SECTION 8.** 49.45 (18) (ac) of the statutes is amended to read:

4 49.45 (18) (ac) Except as provided in pars. (am) to (d), and subject to par. (ag),
5 any person eligible for medical assistance under s. 49.46, 49.468, or 49.47, or for the
6 benefits under s. 49.46 (2) (a) and (b) under s. 49.471 shall pay up to the maximum
7 amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided
8 under s. 49.46 (2). The service provider shall collect the specified or allowable
9 copayment, coinsurance, or deductible, unless the service provider determines that
10 the cost of collecting the copayment, coinsurance, or deductible exceeds the amount
11 to be collected. The department shall reduce payments to each provider by the
12 amount of the specified or allowable copayment, coinsurance, or deductible. ~~No~~
13 Unless otherwise provided by the department by rule promulgated under sub. (2m)
14 (c), no provider may deny care or services because the recipient is unable to share
15 costs, but an inability to share costs specified in this subsection does not relieve the
16 recipient of liability for these costs.

17 **SECTION 9.** 49.45 (18) (ag) (intro.) of the statutes is amended to read:

18 49.45 (18) (ag) (intro.) Except as provided in pars. (am), (b), and (c), and subject
19 to par. (d), a recipient specified in par. (ac) shall pay all of the following, unless
20 otherwise provided by the department by rule promulgated under sub. (2m) (c):

21 **SECTION 10.** 49.45 (18) (b) (intro.) of the statutes is amended to read:

22 49.45 (18) (b) (intro.) ~~The~~ Unless otherwise provided by the department by rule
23 promulgated under sub. (2m) (c), the following services are not subject to recipient
24 cost sharing under this subsection:

25 **SECTION 11.** 49.45 (18) (d) of the statutes is amended to read:

1 49.45 (18) (d) No person who designates a pharmacy or pharmacist as his or
2 her sole provider of prescription drugs and who so uses that pharmacy or pharmacist
3 is liable under this subsection for more than \$12 per month for prescription drugs
4 received, unless otherwise provided by the department by rule promulgated under
5 sub. (2m) (c).

6 **SECTION 12.** 49.45 (23) (a) of the statutes is amended to read:

7 49.45 (23) (a) The department shall request a waiver from the secretary of the
8 federal department of health and human services to permit the department to
9 conduct a demonstration project to provide health care coverage for basic primary
10 and preventive care to adults who are under the age of 65, who have family incomes
11 not to exceed 200 percent of the poverty line, and who are not otherwise eligible for
12 medical assistance under this subchapter, the Badger Care health care program
13 under s. 49.665, or Medicare under 42 USC 1395 et seq. If the department
14 promulgates a rule under sub. (2m) (c) 10., this paragraph does not apply to the
15 extent that it conflicts with the rule.

16 **SECTION 13.** 49.45 (23) (b) of the statutes is amended to read:

17 49.45 (23) (b) If the waiver is granted and in effect, the department may
18 promulgate rules defining the health care benefit plan, including more specific
19 eligibility requirements and cost-sharing requirements. ~~Cost~~ Unless otherwise
20 provided by the department by rule promulgated under sub. (2m) (c), cost sharing
21 may include an annual enrollment fee, which may not exceed \$75 per year.
22 Notwithstanding s. 227.24 (3), the plan details under this subsection may be
23 promulgated as an emergency rule under s. 227.24 without a finding of emergency.
24 If the waiver is granted and in effect, the demonstration project under this subsection

1 shall begin on January 1, 2009, or on the effective date of the waiver, whichever is
2 later.

3 **SECTION 14.** 49.45 (24g) (c) of the statutes is amended to read:

4 49.45 (24g) (c) The department's proposal under par. (a) shall specify increases
5 in reimbursement rates for providers that satisfy the conditions under par. (a) 1. or
6 2., and shall provide for payment of a monthly per-patient care coordination fee to
7 those providers. The department shall set the increases in reimbursement rates and
8 the monthly per-patient care coordination fee so that together they provide
9 sufficient incentive for providers to satisfy a condition under par. (a) 1. or 2. The
10 proposal shall specify effective dates for the increases in reimbursement rates and
11 the monthly per-patient care coordination fee that are no sooner than July 1, 2011.
12 If the department promulgates a rule under sub. (2m) (c) 4., this paragraph does not
13 apply to the extent that it conflicts with the rule.

14 **SECTION 15.** 49.45 (24r) (a) of the statutes is amended to read:

15 49.45 (24r) (a) The department shall implement any waiver granted by the
16 secretary of the federal department of health and human services to permit the
17 department to conduct a demonstration project to provide family planning, as
18 defined in s. 253.07 (1) (a), under medical assistance to any woman between the ages
19 of 15 and 44 whose family income does not exceed 200% of the poverty line for a family
20 the size of the woman's family. If the department promulgates a rule under sub. (2m)
21 (c) 10., this paragraph does not apply to the extent it conflicts with the rule.

22 **SECTION 16.** 49.45 (24r) (b) of the statutes is amended to read:

23 49.45 (24r) (b) The department may request an amended waiver from the
24 secretary to permit the department to conduct a demonstration project to provide
25 family planning to any man between the ages of 15 and 44 whose family income does

1 not exceed 200 percent of the poverty line for a family the size of the man's family.
2 If the amended waiver is granted, the department may implement the waiver. If the
3 department promulgates a rule under sub. (2m) (c) 10., this paragraph does not apply
4 to the extent it conflicts with the rule.

5 **SECTION 17.** 49.45 (25g) (c) of the statutes is amended to read:

6 49.45 **(25g)** (c) The department's proposal under par. (b) shall specify increases
7 in reimbursement rates for providers that satisfy the conditions under par. (b), and
8 shall provide for payment of a monthly per-patient care coordination fee to those
9 providers. The department shall set the increases in reimbursement rates and the
10 monthly per-patient care coordination fee so that together they provide sufficient
11 incentive for providers to satisfy a condition under par. (b) 1. or 2. The proposal shall
12 specify effective dates for the increases in reimbursement rates and the monthly
13 per-patient care coordination fee that are no sooner than January 1, 2011. The
14 increases in reimbursement rates and monthly per-patient care coordination fees
15 that are not provided by the federal government shall be paid from the appropriation
16 under. s. 20.435 (1) (am). If the department promulgates a rule under sub. (2m) (c)
17 4., this paragraph does not apply to the extent it conflicts with the rule.

18 **SECTION 18.** 49.45 (27) of the statutes is amended to read:

19 49.45 **(27)** ELIGIBILITY OF ALIENS. A person who is not a U.S. citizen or an alien
20 lawfully admitted for permanent residence or otherwise permanently residing in the
21 United States under color of law may not receive medical assistance benefits except
22 as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v), unless otherwise
23 provided by the department by rule promulgated under sub. (2m) (c).

24 **SECTION 19.** 49.45 (39) (b) 1. of the statutes is amended to read:

1 49.45 (39) (b) 1. 'Payment for school medical services.' If a school district or a
2 cooperative educational service agency elects to provide school medical services and
3 meets all requirements under par. (c), the department shall reimburse the school
4 district or the cooperative educational service agency for 60% of the federal share of
5 allowable charges for the school medical services that it provides, unless otherwise
6 provided by the department by rule promulgated under sub. (2m) (c), and, as
7 specified in subd. 2., for allowable administrative costs. If the Wisconsin Center for
8 the Blind and Visually Impaired or the Wisconsin Educational Services Program for
9 the Deaf and Hard of Hearing elects to provide school medical services and meets all
10 requirements under par. (c), the department shall reimburse the department of
11 public instruction for 60% of the federal share of allowable charges for the school
12 medical services that the Wisconsin Center for the Blind and Visually Impaired or
13 the Wisconsin Educational Services Program for the Deaf and Hard of Hearing
14 provides, unless otherwise provided by the department by rule promulgated under
15 sub. (2m) (c), and, as specified in subd. 2., for allowable administrative costs. A school
16 district, cooperative educational service agency, the Wisconsin Center for the Blind
17 and Visually Impaired or the Wisconsin Educational Services Program for the Deaf
18 and Hard of Hearing may submit, and the department shall allow, claims for common
19 carrier transportation costs as a school medical service unless the department
20 receives notice from the federal health care financing administration that, under a
21 change in federal policy, the claims are not allowed. If the department receives the
22 notice, a school district, cooperative educational service agency, the Wisconsin
23 Center for the Blind and Visually Impaired, or the Wisconsin Educational Services
24 Program for the Deaf and Hard of Hearing may submit, and the department shall
25 allow, unreimbursed claims for common carrier transportation costs incurred before

1 the date of the change in federal policy. The department shall promulgate rules
2 establishing a methodology for making reimbursements under this paragraph. All
3 other expenses for the school medical services provided by a school district or a
4 cooperative educational service agency shall be paid for by the school district or the
5 cooperative educational service agency with funds received from state or local taxes.
6 The school district, the Wisconsin Center for the Blind and Visually Impaired, the
7 Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the
8 cooperative educational service agency shall comply with all requirements of the
9 federal department of health and human services for receiving federal financial
10 participation.

11 **SECTION 20.** 49.46 (1) (n) of the statutes is created to read:

12 49.46 (1) (n) If the department promulgates a rule under s. 49.45 (2m) (c) 8.,
13 9., or 10., this subsection does not apply to the extent that it conflicts with the rule.

14 **SECTION 21.** 49.46 (2) (a) (intro.) of the statutes is amended to read:

15 49.46 (2) (a) (intro.) Except as provided in par. (be) and unless otherwise
16 provided by the department by rule promulgated under s. 49.45 (2m) (c), the
17 department shall audit and pay allowable charges to certified providers for medical
18 assistance on behalf of recipients for the following federally mandated benefits:

19 **SECTION 22.** 49.46 (2) (b) (intro.) of the statutes is amended to read:

20 49.46 (2) (b) (intro.) Except as provided in pars. (be) and (dc) and unless
21 otherwise provided by the department by rule promulgated under s. 49.45 (2m) (c),
22 the department shall audit and pay allowable charges to certified providers for
23 medical assistance on behalf of recipients for the following services:

24 **SECTION 23.** 49.465 (2) (intro.) of the statutes is amended to read:

1 49.465 (2) (intro.) A Unless otherwise provided by the department by rule
2 promulgated under s. 49.45 (2m) (c), a pregnant woman is eligible for medical
3 assistance benefits, as provided under sub. (3), during the period beginning on the
4 day on which a qualified provider determines, on the basis of preliminary
5 information, that the woman's family income does not exceed the highest level for
6 eligibility for benefits under s. 49.46 (1) or 49.47 (4) (am) or (c) 1. and ending as
7 follows:

8 **SECTION 24.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

9 49.47 (4) (a) (intro.) Any Unless otherwise provided by the department by rule
10 under s. 49.45 (2m) (c), any individual who meets the limitations on income and
11 resources under pars. (b) to (c) and who complies with pars. (cm) and (cr) shall be
12 eligible for medical assistance under this section if such individual is:

13 **SECTION 25.** 49.47 (5) (intro.) of the statutes is amended to read:

14 49.47 (5) INVESTIGATION BY DEPARTMENT. (intro.) The department may make
15 additional investigation of eligibility at any of the following times:

16 **SECTION 26.** 49.47 (5) (a) of the statutes is amended to read:

17 49.47 (5) (a) When there is reasonable ground for belief that an applicant may
18 not be eligible or that the beneficiary may have received benefits to which the
19 beneficiary is not entitled; ~~or,~~

20 **SECTION 27.** 49.47 (5) (c) of the statutes is created to read:

21 49.47 (5) (c) Any time determined by the department by rule promulgated
22 under s. 49.45 (2m) (c) to determine eligibility or to reevaluate continuing eligibility.

23 **SECTION 28.** 49.47 (6) (a) (intro.) of the statutes is amended to read:

1 49.47 (6) (a) (intro.) The Unless otherwise provided by the department by rule
2 promulgated under s. 49.45 (2m) (c), the department shall audit and pay charges to
3 certified providers for medical assistance on behalf of the following:

4 **SECTION 29.** 49.471 (13) of the statutes is created to read:

5 49.471 (13) APPLICABILITY. If the department promulgates a rule under s. 49.45
6 (2m) (c), subs. (4), (5), (8), (10), and (11) do not apply to the extent that those
7 subsections conflict with the rule.

8 **SECTION 30.** 49.472 (3) (intro.) of the statutes is amended to read:

9 49.472 (3) ELIGIBILITY. (intro.) Except as provided in sub. (6) (a) and unless
10 otherwise provided by the department by rule promulgated under s. 49.45 (2m) (c),
11 an individual is eligible for and shall receive medical assistance under this section
12 if all of the following conditions are met:

13 **SECTION 31.** 49.472 (4) (b) (intro.) of the statutes is amended to read:

14 49.472 (4) (b) (intro.) The department may waive monthly premiums that are
15 calculated to be below \$10 per month. The Unless otherwise provided by the
16 department by rule promulgated under s. 49.45 (2m) (c), the department may not
17 assess a monthly premium for any individual whose income level, after adding the
18 individual's earned income and unearned income, is below 150% of the poverty line.

19 **SECTION 32.** 49.473 (2) (intro.) of the statutes is amended to read:

20 49.473 (2) (intro.) ~~A~~ Unless otherwise provided by the department by rule
21 promulgated under s. 49.45 (2m) (c), a woman is eligible for medical assistance as
22 provided under sub. (5) if, after applying to the department or a county department,
23 the department or a county department determines that she meets all of the
24 following requirements:

25 **SECTION 33.** 49.473 (5) of the statutes is amended to read:

1 49.473 (5) The department shall audit and pay, from the appropriation
2 accounts under s. 20.435 (4) (b) and (o), allowable charges to a provider who is
3 certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who
4 meets the requirements under sub. (2) for all benefits and services specified under
5 s. 49.46 (2), unless otherwise provided by the department by rule promulgated under
6 s. 49.45 (2m) (c).

7

(END)

Dodge, Tamara

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]

Sent: Wednesday, February 02, 2011 11:47 AM

To: Dodge, Tamara

Cc: Gauger, Michelle C - DOA

Subject: RE: LRB-1143/3 BAB0031

Tami,

Here are some new changes BAB0031.

✓ Pg. 13, In 20 [Sec. 27 – redeterminations]: If fed law allows us to redetermine eligibility more frequently than every 12 months and nothing is in the stat that says otherwise, remove the rule-making here because it would force us to go through rule-making when unnecessary.

✓ Pg. 14, In 6 (Sec 29 – BC+): To assure maximum flexibility, add paras (6) and (7) to those that a rule would trump.

Please let me know if you have any questions.

Thanks.

Marta Skwarczek

Health Services and Insurance Team
Executive Policy and Budget Analyst
608-267-7980

From: Skwarczek, Marta A - DOA

Sent: Tuesday, February 01, 2011 9:44 AM

To: Dodge, Tamara - LEGIS

Subject: RE: LRB-1143/1 BAB0031

Thanks!!

Marta Skwarczek

Health Services and Insurance Team
Executive Policy and Budget Analyst
608-267-7980

From: Dodge, Tamara [mailto:Tamara.Dodge@legis.wisconsin.gov]

Sent: Tuesday, February 01, 2011 9:43 AM

To: Skwarczek, Marta A - DOA

Subject: RE: LRB-1143/1 BAB0031

This draft is in typing right now. I will wait until the /2 is submitted to you, which should be shortly, and then I will create a /3 with the change requested below. You should get the /3 today.

Tami

Tamara J. Dodge

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From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, February 01, 2011 9:40 AM
To: Dodge, Tamara
Subject: RE: LRB-1143/1 BAB0031

Tami,
Here is a small change to add to the BAB Medicaid Reform draft:

The department shall request a waiver from the secretary of the federal Department of Health and Human Services to permit the department to have in effect eligibility standards, methodologies and procedures under the Medicaid State Plan or Medicaid waivers that are more restrictive than those in place on the date of enactment of the Patient Protection and Affordable Care Act. If this waiver request does not receive federal approval prior to December 31, 2011, ~~prior to July 1, 2012~~, the department shall reduce income levels for the purposes of determining eligibility to 133 percent of the federal poverty line for adults who are not pregnant and not disabled on July 1, 2012, to the extent permitted under the Patient Protection and Affordable Care Act (or section 1902 of the Social Security Act as amended by PPACA).

Marta Skwarczek
Health Services and Insurance Team
Executive Policy and Budget Analyst
608-267-7980

From: Skwarczek, Marta A - DOA
Sent: Thursday, January 27, 2011 5:51 PM
To: Dodge, Tamara - LEGIS
Cc: Gauger, Michelle C - DOA
Subject: RE: LRB-1143/1 BAB0031

Tami,
As a follow up, DHS has recommended that the "unless otherwise provided..." clause be inserted in the following additional statutory provisions:

49.45 (2)(a) – general requirements

49.45 (8) – per-visit limits on home health reimbursement

49.45 (8v) – incentive-based pharmacy payment system

49.45 (39) – school-based services (60% requirement)

49.46 (1) – eligibility [consider creating a par (n) such that the "unless otherwise provided" clause covers all eligibility provisions of sub. (1), rather than just par. (a)]

49.46(2)(b) – covered optional benefits

Marta Skwarczek
Health Services and Insurance Team
Executive Policy and Budget Analyst
608-267-7980

From: Skwarczek, Marta A - DOA
Sent: Thursday, January 27, 2011 12:20 PM

2/3/2011

To: Dodge, Tamara - LEGIS
Subject: LRB-1143/1 BAB0031
Importance: High

Tami,

I apologize for the piecemeal way I am giving this to you; however, DHS's legal team has made most of these changes. Their marked up version of the bill is attached here; I think it should reflect changes a-c.

This is a summary of the changes:

a) Eliminate the provision that DHS should submit legislation to conform statutes to any rules promulgated to implement reform items.

b) Make the paragraph about emergency rule authority more broad. New language to replace paragraph (e), page 4, lines 14 -16 is included below. The proposed language will allow the emergency rule to remain in effect until repealed and we wouldn't need to make a finding of emergency.

(e) The department may use the procedure under s. 227.24 to promulgate a rule under par. (c). Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under this subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

c) Replace line 3, page 4, to read: "8. Set standards for establishing and verifying eligibility requirements."

d) The provision reducing eligibility of individuals over 133% of the federal poverty level should be amended:

The department shall request a waiver from the secretary of the federal Department of Health and Human Services to permit the department to have in effect eligibility standards, methodologies and procedures under the Medicaid State Plan or Medicaid waivers that are more restrictive than those in place on the date of enactment of the Patient Protection and Affordable Care Act. If this waiver request does not receive federal approval prior to July 1, 2012, the department shall reduce income levels for the purposes of determining eligibility to 133 percent of the federal poverty line for adults who are not pregnant and not disabled, to the extent permitted under the Patient Protection and Affordable Care Act (or section 1902 of the Social Security Act as amended by PPACA).

Here is the PPACA language as a reference:

Patient Protection and Affordable Care Act (PPACA); Public Law 111-148

(b) MAINTENANCE OF MEDICAID INCOME ELIGIBILITY.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)—

(A) by striking “and” at the end of paragraph (72);

(B) by striking the period at the end of paragraph (73)

and inserting “; and”; and

(C) by inserting after paragraph (73) the following new paragraph:

“(74) provide for maintenance of effort under the State plan or under any waiver of the plan in accordance with subsection (gg).”; and

(2) by adding at the end the following new subsection:

“(gg) MAINTENANCE OF EFFORT.—

“(1) GENERAL REQUIREMENT TO MAINTAIN ELIGIBILITY STANDARDS UNTIL STATE EXCHANGE IS FULLY OPERATIONAL.—

Subject to the succeeding paragraphs of this subsection, during the period that begins on the date of enactment of the Patient Protection and Affordable Care Act and ends on the date on which the Secretary determines that an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act is fully operational, as a condition for receiving any Federal payments under section 1903(a) for calendar

quarters occurring during such period, a State shall not have in effect eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of such plan that is in effect during that period, that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under the plan or waiver that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

“(2) CONTINUATION OF ELIGIBILITY STANDARDS FOR CHILDREN UNTIL OCTOBER 1, 2019.—The requirement under paragraph (1) shall continue to apply to a State through September 30, 2019, with respect to the eligibility standards, methodologies, and procedures under the State plan under this title or under any waiver of such plan that are applicable to determining the eligibility for medical assistance of any child who is under 19 years of age (or such higher age as the State may have elected).

“(3) NONAPPLICATION.—During the period that begins on January 1, 2011, and ends on December 31, 2013, the requirement under paragraph (1) shall not apply to a State with respect to nonpregnant, nondisabled adults who are eligible for medical assistance under the State plan or under a waiver of the plan at the option of the State and whose income exceeds 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved if, on or after December 31, 2010, the State certifies to the Secretary that, with respect to the State fiscal year during which the certification is made, the State has a budget deficit, or with respect to the succeeding State fiscal year, the State is projected to have a budget deficit. Upon submission of such a certification to the Secretary, the requirement under paragraph (1) shall not apply to the State with respect to any remaining portion of the period described in the preceding sentence.

DHS also has the following question: you add the phrase "Unless otherwise provided by the Department by rule promulgated under sub. (2m)(c)..." to a number of paragraphs under s.49.45 and 49.46 but not to every paragraph. For example, the draft inserts the "notwithstanding" language in s. 49.46(2)(a), relating to mandatory benefits, but not s. 49.46(2)(b), relating to optional benefits. DHS would like to know how you decided which paragraphs were given that phrase.

Thanks.

Marta Skwarczek

Wisconsin Department of Administration
Division of Executive Budget and Finance
Health Services and Insurance Team
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608-267-7980